

REMARKS/ARGUMENTS

In the Office Action dated July 31, 2009, Claims 1-8, 11, 12, and 20 were rejected under 35 U.S.C. § 103(a) as being obvious in light of U.S. Patent No. 6,663,348 to Schwarz (“*Schwarz*”) in view of U.S. Patent No. 4,846,048 to Hvilsted (“*Hvilsted*”) in view of U.S. Patent No. 4,662,177 to David (“*David*”) in view of U.S. Patent No. 4,474,537 to Dolz (“*Dölz*”). Claim 11 is also rejected under § 103(a) as being obvious in light of *Dölz* in view of *Hvilsted*. Claim 15 is rejected under § 103(a) as being obvious in light of *Schwarz* in view of *Hvilsted* in view of *Dölz*. In response, Applicant has amended independent Claims 1, 11, and 15. The rejections are addressed below.

Applicant’s attorney initially wishes to thank the Examiner for the telephonic interview held on September 15, 2009 with Examiner Bobish and Examiner Kramer. In the interview, the parties discussed possible amendments to the independent claims and each parties’ understanding of the prior art cited in the outstanding Office Action. The Applicant’s arguments regarding the failings of the prior art and proposed amendments to the claims are discussed below.

The Office Action relies on *Dölz* as teaching a valve plate, a through-bore, an inductive sensor, a protector and a sealing joint, wherein a portion of the protector is disposed between the sealing joint and the valve plate. The “sealing joint” recitation of the claims is broadly construed by the Office Action, and is said to be met by the “joint between the walls of the protector and the walls of the pump, or between the screw tops and the protector.” The Office Action then turns to *Hvilsted* to reposition the sensor of *Dölz* into the valve plate by reasoning that such a reconstruction of the references involves only routine skill in the art since a mere rearrangement of parts is obvious.

Applicant respectfully traverses the underlying assumption of this rejection, which is that the sensor of *Dölz* can be readily moved to the *Hvilsted* device, because the sensor of *Dölz* is not

actually exposed to the cylinder pressure. Indeed, the proposed “sealing joint” of *Dölz* is actually located in a part of the compressor that is not under cylinder pressure. Although it is not that clear from *Dölz*, it appears that the pressurized volume in *Dölz* is defined between the piston 3 and the pressure chamber element 29. As such, the sensor only senses the movement of the piston by the driving coil mechanism outside of the pressurized space. Thus, the somewhat-strained construction of the term "sealing joint" used to find a sealing joint in *Dölz* is even less tenable given that the position of this sealing joint prevents it from ever needing to seal against the cylinder pressure.

As further discussed during the interview, however, the proposed “sealing joint” of *Dölz*, even if it is assumed to seal against the cylinder pressure (notwithstanding the above), does not include a gasket-like member as illustrated in the present application. To make this distinction more clear, Applicants have amended independent Claims 1, 11 and 15 as shown above to recite that the recited sealing joint further defines a generally planar portion. This generally planar portion of the sealing joint is further defined such that at least a portion of the protector is disposed between the recesses in the valve plate and the generally planar portion of the sealing joint.

Applicant respectfully asserts that *Dölz* and the other cited reference do not teach or suggest a sealing joint as recited in the independent claims as amended that has a generally planar portion positioned relative to recesses in a valve plate such that at least a portion of a sensor protector is disposed therebetween. Accordingly, Applicant respectfully requests that the rejection of the independent claims under § 103(a) be withdrawn.

The patentability of the independent claims has been argued as set forth above and thus Applicant will not take this opportunity to argue the merits of the rejection with regard to the dependent claims. However, Applicant does not concede that the dependent claims are not independently patentable and reserves the right to argue the patentability of the dependent claims at a later date if necessary.

Appl. No.: 10/527,395
Amdt. dated November 4, 2009
Reply to Office Action of July 31, 2009

Applicant appreciates the Examiner's careful consideration of this application and would welcome a telephone conference with the Examiner to expedite the processing of the patent application. Applicant's attorney, Jason Cooper, may be reached directly at (404) 881-4831.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

/Jason P. Cooper/

Jason P. Cooper
Registration No. 38,114

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Atlanta Office (404) 881-7000
Fax Atlanta Office (404) 881-7777

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON NOVEMBER 4, 2009.